

CHAPTER ONE

INTRODUCTION

Awareness of police misconduct in the United States reached new heights in the year 2000 due in part to the Los Angeles Police Department's Rampart scandal which ranks as one of the worst police scandals in history. The Independent Police Auditor (IPA) provided insight to the Rampart Independent Review Panel on how the IPA conducts civilian oversight of the San José Police Department (SJPD). This information assisted the Rampart Independent Review Panel in preparing their comprehensive investigative report of the Rampart scandal which also made numerous findings and recommendations for changes to how the Los Angeles Police Department operates and is structured.

While the fear of a Rampart-type scandal was instrumental in nudging cities throughout the country toward implementing some form of civilian oversight for their respective police departments, the City of San José did not establish the Office of the Independent Police Auditor in response to a crisis situation. This has helped the IPA to successfully carry out its primary objective that is to provide independent civilian review of the citizen complaint process. To carry out this objective, the IPA has three primary functions:

1. Serving as an alternate office where people may file a complaint of police misconduct;
2. Monitoring and auditing the investigations of citizen complaints conducted by the SJPD; and
3. Promoting public awareness of a person's right to file a complaint.

The IPA continues to closely examine every aspect of the citizen complaint process from the initial interaction between the Internal Affairs officer and the complainant to the conclusion of the investigation. The finding made by the SJPD is examined to insure that it is supported by the evidence and the IPA also reviews the process used to communicate the results of the investigation to the complainant by the Internal Affairs unit.

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EXECUTIVE SUMMARY & RECOMMENDATIONS

FOCUS ON CUSTOMER SERVICE

The efforts made by both the SJPd and the IPA over the past several years to improve community relations and increase public confidence helped San José to positively address several police incidents which occurred in 2000. Consistent with the City's new "Investing in Results" performance measure program to improve customer service, the SJPd has embraced the direction to improve customer satisfaction. These efforts have resulted in significant gains in public confidence as demonstrated by the results of a survey commissioned by the City of San José. This survey revealed that about three-fourths of those residents who have had contact with the SJPd said that the officer with whom they had contact with was courteous and helpful and that two-thirds believed that the SJPd treated people fairly. The findings of the City's survey affirm the IPA's belief that the San José Police Department has a culture of openness, a willingness to accept criticism and a desire to focus on solutions.

CONTENTS OF THE REPORT

Citizen contacts are reported this year by dividing them into serious and minor complaints and cases that are resolved without rising to the complaint level. Public outreach and the expansion of the IPA into the neighborhoods are also reported and the status of pending issues and recommendations from previous years is provided.

The "New Issues" section of the report discusses the IPA's recommendation that the SJPd explore ways to improve, implement and assess a comprehensive ethics program. It is also suggests that the police department should explore a more comprehensive ethics program now during a time when they are enjoying a high level of public confidence. If attempted in the wake of a crisis or when public confidence is down, additional ethical concepts may be viewed with skepticism by the public and resentment by officers as only a temporary cure by management.

Lastly, the report includes a self assessment of the IPA based on the findings of the 2000 Santa Clara County Grand Jury Report, the findings of the 2000 City of San José Survey, customer satisfaction surveys from complainants, surveys collected during community presentations, and from surveys completed by Internal Affairs staff.

CHAPTER TWO

NEW RECOMMENDATION – ETHICS & INTEGRITY STANDARDS

Public trust in police can only exist when police execute their duties fairly, courteously and with no more force than is necessary. A police department that conducts itself in this manner is said to be ethical and operate with integrity. The SJPd has placed great emphasis in enhancing the quality of police services by implementing community policing in every San José neighborhood. At the heart of community policing is police integrity. The police and the community must develop mutual

trust and this requires that the community will have faith in the integrity of the police. The ethics and integrity of the individual police officer must be aligned with the ethics and integrity standards of the police department, which must in turn, be aligned with those of the community.

In order to assess the existing ethical climate in the SJPd, the IPA obtained and reviewed many sources of information, including:

- SJPd Duty Manual which sets parameters and provides guidelines to officers;
- Lt. Tuck Younis who has extensive knowledge and experience in this area and teaches the ethics class;
- Los Angeles Police Department Board of Inquiry Report concerning the ethical issues associated with the Rampart scandal;
- Professor Erwin Chemerinsky's independent analysis of the LAPD Board of Inquiry Report;
- Mr. Hubert William, President of the Police Foundation
- "A Global Market for Ethics," a publication from the Commission on Peace Officer Standards and Training
- Police Integrity, Public Service with Honor, published by the U.S. Department of Justice
- "Ethical Conduct and Discipline in the Queensland Police Service," a study conducted by the Australia Criminal Justice Commission

An effective ethics program requires that integrity be learned and reinforced and begins with the tone set by the Chief of any police department. Police Chief William Lansdowne created and implemented an ethics program that requires all members of the SJPd to take the ethics training class that is now part of the department's Continuous Professional Training. Chief Lansdowne underscores the importance of this training by participating at the beginning of every ethics class. The class stresses the importance of the department's ethical standards and that strict adherence to these standards is necessary for "career survival." Additionally, Field Training Officers receive specialized ethics training and are expected to apply and reinforce these standards in the recruits they train.

WHISTLEBLOWER POLICY

Former San José Police Chief, Joseph McNamara has written, "Police misconduct can only be curtailed when police officers fear that their fellow officers will turn them in." Although SJPd officers can be disciplined for failing to report the misconduct of fellow officers, there is no department policy that specifically informs, protects and encourages the reporting of misconduct.

Creating an environment where the honest cop will come forward remains a challenge for most police departments. Both the public and police officers must be made to feel confident in reporting police misconduct. Since the dangerous nature of a police officer's job makes it understandable why an officer may feel greater loyalty to his/her peers, a whistleblower must be reassured and supported not as an informant but as one who has the best interest of the organization at heart.

EVALUATING THE EFFECTIVENESS OF ETHICAL TRAINING AND STANDARDS

After assessing the SJPD's ethics training, the IPA was informed that the effectiveness of this training had not been evaluated. It was determined that SJPD relies on Internal Affairs files and yearly personnel evaluations as a measure of an officer's adherence to ethical conduct. The SJPD should develop a way to evaluate the effectiveness of their ethics and integrity training programs, which should include, among others, an assessment of officer knowledge, beliefs and opinions toward required ethical conduct. The following areas, among others should be considered:

- level of knowledge about the disciplinary and complaint process and the consequences of unethical behavior
- whether the department has necessary resources and measures to detect and deter wrongdoing
- whether the department is viewed as punitive or supportive
- relations with department management
- whether the public understands their roles as police officers
- reporting misconduct and whether an officer fears retaliation for reporting misconduct
- whether the department's response to misconduct is serious

The IPA obtained permission from the Australia Criminal Justice Commission (CJC) to utilize survey materials that are part of their successful program that measures attitudinal changes in ethical conduct. CJC conducts ongoing research by regularly administering a survey to recruits, first year and experienced officers to monitor changes in attitudes or views towards ethical conduct. The survey contains scenarios of police conduct, which present various types of ethical questions or conduct, which could result in some form of disciplinary action. Officers are asked to rate the conduct presented on a 10-point scale, ranging from "not at all serious" to "extremely serious" and the officers are asked to do this rating as an individual officer, as a fellow officer, as the police department and as a member of the public.

The IPA believes that this survey would serve as an excellent tool to evaluate and measure the ethical training program of the SJPD. Ultimately, this measurement tool could be used to align the views of the individual officer with those of the police administration and the public.

OPTIMUM TIME TO STRENGTHEN THE ETHICS PROGRAM

A common problem encountered in implementing or strengthening ethics training in a police department is that it is often attempted in the aftermath of a crisis or when public confidence in the police department is very low. In this situation, police officers will more likely resent or view this type of ethics training as a way to appease the critics and the public will be equally dissatisfied because of their skepticism in the motives for the additional ethics training and suspicions of the chance for any real change.

The SJPD is currently enjoying a high level of public confidence as shown by results of a random customer satisfaction survey of 1,000 city residents commissioned by the City of San José in the Fall of 2000. 77% of those surveyed who had contact with the SJPD indicated that the SJPD officer was courteous and pleasant. 64% responded that generally speaking, the SJPD treats all members of the public fairly. The SJPD also has a reputation for being on the cutting edge of community policing programs and is not currently confronting any type of crisis. Therefore, this is the optimum time to implement a process to align the ethical values between the police department and the citizens of San José.

RECOMMENDATIONS

1. To reassure the public that it is safe to file complaints, the Chief of Police should create policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.
2. The Chief of Police should include in all citizen complaint printed materials wording that clearly states that; “Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation and immediate action will be taken if an officer retaliates against a complainant directly or indirectly” or other similar words that emphasizes the Chief’s position.
3. The San José Police Department Duty Manual does not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistle-blower policy for the San José Police Department.
4. The Chief of Police should continue to develop the Ethics and Integrity Training to reflect and align with the ethics expected by the citizens of San José.

CHAPTER THREE

COMMUNITY OUTREACH

As stated previously, community outreach to promote public awareness of a person's right to file a complaint concerning police misconduct is one of the primary functions of the Office of the Independent Police Auditor (IPA). The IPA has dedicated the necessary resources to insure that this very important function is not relegated to a secondary duty. Community outreach is an area that many police oversight agencies neglect. Consequently, an acceptable level of public confidence is never reached.

With the addition of two staff members in August, the Public and Community Relations officer has been able to concentrate solely on community outreach while the IPA office has also been able to provide better customer service to individual complainants and meet the increased demand from the public.

COMMUNITY PRESENTATIONS AND EVENTS

The response from community organizations and associations to have the IPA conduct presentations continued to be positive in the year 2000. The IPA attended 59 community presentations and events, 11 of which were conducted for youth groups or organizations that work with youth. The IPA continued to reach out to new and different neighborhood and business associations and to different areas of the City as well. An expanded presentation was developed in both English and Spanish, which contains information specific to the council district in which the presentation was made. The IPA also continued its practice of inviting beat officers and members of the Internal Affairs Unit to attend community presentations.

REACHING OUT TO YOUTH

One of the IPA's goals is to educate and inform the youth so they can make wise decisions when encountering law enforcement. In 2000, the IPA focused on working closely with youth by partnering with agencies that work with young people, including, Clean Slate, Washington United Youth Center, Role Model Program, Catholic Charities and Mexican American Community Services Agency. The continuing objective is for the IPA to gain trust and credibility with youth and to convey the importance that young people know they have a place where they can voice their concerns and be taken seriously.

As a result of working with youth, the IPA learned that young people need a better understanding of police procedures and criminal laws. With this in mind, the IPA is working on creating an information brochure that will target youth and provide them with information about civil rights, police procedures, laws and suggested behavior when interacting or encountering law enforcement officers. The brochure will cover commonly asked questions about police harassment, traffic stops, Fifth

Amendment rights and detentions.

REFERRAL SITES

The IPA began establishing referral sites in 1999. The goal of the referral sites is to serve as an information center for residents who may be seeking information on how to file a police misconduct complaint. The referral site would only provide basic information about the services offered by the IPA and refer any possible complainants to the IPA for additional assistance. Preferred sites are community centers or other locations frequently visited by the public.

In 2000, 14 new referral sites were established, bringing the total number throughout the City to 31. Three of the new sites are in Council districts that did not previously have a site. The IPA also has received assistance from 18 branch libraries and other city and county agencies as places where IPA brochures are made available to the public.

WORK WITH PROFESSIONAL AND COMMUNITY ORGANIZATIONS

The IPA continues to work successfully with various professional and community organizations to promote IPA awareness by staying actively involved with many groups. As a member of the Bay Area Police Oversight Network (BAPON), which includes eight northern California cities, the IPA hosted the April meeting of BAPON which included a full day of training. It is the IPA's opinion that in order to stay in touch with the needs and concerns of the community, the IPA needs to be actively involved in the community.

In addition to actively participating in community organizations to insure that the IPA is aware of community needs and concerns, the IPA continues to receive input on police related concerns from the Independent Police Auditor Advisory Committee (IPAAC). The IPA formed this group of culturally diverse community leaders in 1999.

CHAPTER FOUR

VEHICLE STOP DEMOGRAPHIC STUDY

In December 2000, the San José Police Department (SJPd) released data from the Vehicle Stop Demographic Study for the period of July 1, 1999 to June 30, 2000. The study was designed to collect data that would identify the ethnicity, gender, age, location and action taken against a driver as a result of a vehicle stop by a SJPd police officer. It was anticipated and believed that the results of this study would clearly show that members of the SJPd do not engage in racial profiling or conduct pretext stops of minority community members.

The term “racial profiling” has long been a sensitive issue that lacks an accepted and recognized definition. In a vehicle traffic stop, racial profiling occurs when the officer uses race or ethnicity as the deciding factor for making the traffic stop. Suspicion must be based on more than just race or ethnicity. However, it is important to remember that it is legal for a police officer to utilize racial characteristics to make a stop of an individual if the description of the suspect being sought contains racial characteristics.

ANALYSIS OF VEHICLE STOP DATA

While statistics don’t always tell the whole story, through the collection of similar data as that collected by the SJPD, it has been shown that racial profiling exists in some parts of the country. Even though the type of data being collected may be viewed as subjective and untrustworthy, the fact that law enforcement is taking the time to collect “racial profiling” data, is definitely a move in the right direction.

The SJPD’s analysis of data from the Vehicle Stop Demographic Study, indicated that Hispanic Americans and African Americans are stopped at a rate slightly higher than their overall representation within San José as a whole. Although the figure for African Americans does not seem to be significantly disproportionate, the figure for Hispanic Americans on the other hand appears to be problematic and requires further study. By the SJPD’s estimates, Hispanics comprise approximately 31% of the population in San José and are known to be concentrated in higher numbers in some police districts. However, in looking at the central core of the city and analyzing the data from 10 of the 16 policing districts that cover the downtown and the Foothill (Eastside) Division, Hispanic Americans account for 48% of the vehicle stops in these areas alone.

The SJPD study attributes the increased number of stops of minorities to socio-demographic realities of the city and the necessity by the SJPD to deploy more officers accordingly. The hypothesis raised in the study is that more officers are assigned to higher crime sectors/precincts; therefore, minorities who live in these neighborhoods in greater numbers are more likely to get stopped. This analysis may be plausible, but does not explain why Hispanics are being stopped in many areas where they don’t have a large presence or residence. For example, in analyzing the police districts in the Foothill Division, Hispanics make up a large percentage of the residents in the Mary (King and McKee) and Charles (Alum Rock) police districts, but Hispanics do not reach the same proportions in the other two policing districts, Paul (Evergreen) and William (Berryessa).

COMPLAINTS FILED ALLEGING RACIAL PROFILING

The Vehicle Stop Demographic Study indicated that only sixteen official complaints were received from citizens claiming to

have been subjected to a racial profile stop. There could be several reasons for this low number in official complaints filed for alleged racial profiling. Currently, the SJPd has only one classification for chronicling a complaint of racial profiling and that is Discrimination/Harassment (DH). In order to be classified as a DH complaint, the SJPd requires that a complaint must contain what it considers objective criteria. Examples of objective criteria include allegations that the officer used a racially derogatory word or slur, a gesture or action that shows racial bias or can be construed as discriminatory.

Therefore, the mere fact that a person feels they were stopped because of their race is not currently considered sufficient objective criteria to constitute a complaint for racial profiling. This is the case even if it is affirmed that there was no apparent reason for the stop and the complainant may have been handcuffed, searched and subsequently released with no legal action taken against them. In most cases, this type of complaint would be handled informally and not undergo the same level of investigation as a formal complaint.

The IPA believes that the SJPd should develop a method to track all complaints which include allegations of racial profiling or discriminatory stops even if the complaint may not contain “objective criteria” sufficient to establish a discrimination complaint. This will allow tracking and analysis of this serious concern.

PROCESS FOR DATA COLLECTION

In the Vehicle Stop Demographic Study, the SJPd reports that the scope of the program was limited by the officer’s acceptance of a data collection process that was not intrusive of their time. To accomplish this, the department developed a process using alpha codes, like those already in use, that could be easily recited or manually entered by the officer at the end of a vehicle stop.

Although this was an acceptable starting point for SJPd, other law enforcement agencies have started collecting similar data and have expanded the scope of the data being collected to include much more detail. In San Diego California, the San Diego Police Department (SDPD) started collecting data in January 2000. During a six-month reporting period, SDPD documented 91,522 stops. SDPD officers are required to fill out a form (4x6 card) in the field. The card usually takes no more than 20 seconds to complete. The Sacramento Police Department also collects more data than SJPd and uses a Scantron form that provides more efficient data entry.

One area where both San Diego and Sacramento collect data beyond San José is data concerning whether the driver was searched and if so, what type of search was conducted, whether any contraband was found or property seized. It is important for the SJPd to collect detailed “search information” similar to the Sacramento and San Diego police departments.

RECOMMENDATIONS

1. The Chief of Police should expand the fields for data collection to determine how the individual stopped was treated, i.e., was there a search. This should include search information and the factual basis for a stop and the action taken by the officer as a result of the stop.
2. Develop a uniform definition of and process for tracking all “Racial Profiling” allegations in all instances where the complainant alleges that their vehicle stop or police contact was racially motivated.
3. The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of “Racial Profiling” and all other types of citizen complaints.

CHAPTER FIVE

UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

This chapter contains updates on prior recommendations made by the Independent Police Auditor (IPA). The IPA tracks all prior and pending recommendations until a final resolution to each recommendation is reached. In addition, random audits to measure compliance with prior recommendations are also reported in this section.

MEDIATION PROGRAM

As a part of the new issue section of last years-annual report, the IPA recommended a voluntary mediation program for implementation by the San José Police Department (SJPD). On April 8, 2000, the City Council approved the recommendation and response from the San José Police Department to study the feasibility of implementing a mediation program. The IPA envisioned that the proposed mediation program would be an alternative to the formal complaint investigation process that would allow the complainant and the subject officer to engage in meaningful dialogue.

UPDATE: The feasibility study was conducted and completed by the SJPD. The SJPD is committed to designing a voluntary mediation program that will be beneficial for both complainants and officers. To that end, members of the SJPD have participated in meetings with the IPA and members from the Judicial Arbitration and Mediation Services (JAMS), in particular with retired Judge John A. Flaherty. JAMS has agreed to work with the IPA and the SJPD to launch a pilot program wherein members from JAMS will act as mediators. With the credibility provided by JAMS, it is anticipated that the San José Police Department Mediation Program will become operational in the 2001 calendar year.

CITIZEN REQUEST FOR OFFICER IDENTIFICATION

In the IPA 1997 Year End Report, the issue of officer identification was raised for the first time. The IPA's recommendation that the SJPD should develop a policy to direct officers to properly identify themselves, preferably in writing when requested by a citizen was adopted by the City Council. Upon adoption of this recommendation in 1998, the SJPD modified an existing form (incident card) for use by the officers in the field and issued a directive found in the Duty Manual that outlines the use of the card.

In the year 2000, the IPA audited 18 cases where the issue of officer identification was alleged. Nine were handled informally or without requiring a full investigation. In the remainder of the cases, the allegation was part of a Formal complaint, and in most cases the identification allegation was handled in the scope of the investigation. Of the 18 cases, two were sustained.

Although this seems to be a recurring problem that requires constant attention, the fact that many of the cases are being handled informally rather than through a formal investigation may be exacerbating the problem by minimizing the importance of the directive in the Duty Manual. The issuance of an "Incident Card" in response to a request from a member of the public, should be just as important as other police duties. Officers should seek to minimize conflict in these situations by promptly providing their name and badge number. This is the type of complaint that should become obsolete. The IPA will continue to monitor this issue and will look for consistency in classifying this type of complaint in the future.

RECOMMENDATION

The San José Police Department's Internal Affairs Unit should formally investigate all complaints alleging that officers refused to identify him/herself under an Improper Procedure allegation.

OFFICER INVOLVED SHOOTINGS

In the Independent Police Auditor 1998 Year End Report, the IPA recommended that its jurisdiction be expanded to include the review of police shootings whether or not a complaint was filed. The IPA requested that all officer-involved shootings resulting in injury or death be subjected to review by the IPA. In July of 1999, the Chief of Police, in response to the IPA's recommendation, established a process to review officer involved shootings. The purpose of this review process was to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The Chief called this review process the San José Police Department Officer-Involved Shooting Incident Training Review Panel.

In the year 2000, there was a total of five officer-involved shooting incidents involving San José Police Department officers. The Shooting Review Panel examined these incidents. Three out of the five shootings resulted in fatal injuries to the person shot. Two of the fatalities resulted from gunshot wounds to the chest and one to the head. These figures show a decrease from 1999's figures of eight shootings, in which seven were fatalities. Although the incident count is lower, there are still some issues to consider.

One issue to consider is that the percentage of fatalities compared to shootings was at 87.5% in 1999 and decreased to 60% in 2000. Although the percentage has decreased, efforts to decrease that percentage further still need to be examined. Another issue to consider is that two out of the five suspects were armed with a weapon other than a firearm. For these types of cases, officers should have other alternatives to lethal force. A third issue to consider is that out of the five incidents, two of the people shot had mental illness histories. One question that arises is whether police officers are adequately trained to deal with the mentally ill and combative suspects. Another factor is that four out of the five suspects were minorities. This is an important factor to consider as to whether a language barrier between the officer and the suspect could have led to the shooting.

CONCLUSION

An analysis of the officer involved shootings in 2000 raised more questions than provided answers. However, there was a marked improvement from 1999. The number of officer-involved shootings declined to five from eight. The ratio of fatalities compared to shooting incidents also declined, from 87.5% in 1999 to 60% in 2000. Although the number of shootings has decreased, there are still areas that can be improved upon.

RECOMMENDATIONS

1. Continue to identify alternate, less lethal weapons and make them more readily accessible.
2. Provide specialized training in handling suspects armed with non-automatic projectile weapons.
3. The Critical Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with mental illness histories.
4. Continue to recruit and hire officers with bi-lingual skills.

CHAPTER SIX

RESPONSE TO THE GRAND JURY REPORT

On June 26, 2000, the Santa Clara County Grand Jury released their 1999-2000 Final Report titled “Investigation of the Oversight System for Reviewing Use-of-Force Cases in the San José Police Department.” The focus of the Grand Jury’s review was in the area of Use-of-Force complaint investigations against police officers employed by the City of San José. The Grand Jury made only two recommendations that were specific to and that required a response from the IPA.

1. That the IPA advises the City Manager of all complaint investigation cases in which it disagrees with the Chief.
2. That the IPA and/or designee attend all Class 1 Unnecessary Force interviews conducted by Internal Affairs.

In response to the first recommendation, the IPA informed the Grand Jury that the 1999 IPA Year End Report made reference to the number of cases in which the IPA disagreed with the Chief’s findings. In each of these cases the City Manager had an opportunity to inquire and consider the issues in disagreement. The City Manager also had an opportunity to either agree with the Chief’s finding or change the finding to reflect the concerns raised by IPA that led to the disagreement.

In response to the second recommendation, the IPA informed the Grand Jury that the Police Auditor would make attendance at the Class 1 Unnecessary Use-of-Force interviews a priority. The Police Auditor also advised the Grand Jury that without an agreement with the Police Officer’s Association, that allows the Police Auditor to delegate attendance at an officer interview to a qualified IPA staff member, the issue of attendance would continue to be problematic. At the time this response was made, the delegation issue was going through a formal dispute resolution process with the Police Officer’s Association and the City of San José.

On February 2, 2001, the IPA received a favorable Arbitration Decision from retired Justice Nat Agliano regarding the IPA’s authority to delegate the duty of attending subject officer interviews. Justice Agliano of JAMS agreed that the City Charter and the Municipal Code provide to the Independent Police Auditor the authority to delegate her duties and responsibilities and that this function is a matter of managerial discretion not subject to meet and confer.

CHAPTER SEVEN

YEAR END STATISTICS

This chapter provides information about the different types of complaints that were received from January 1 through December 31, 2000. It discusses the allegations in the complaints filed, the findings, and the discipline imposed. It also provides a review of the complaint process.

HOW THE COMPLAINT PROCESS WORKS

All contacts from the public are documented cases. Cases include those public contacts that are resolved to the satisfaction of the complainant and that do not require further investigation or complaints, which are further divided into several classifications, such as: Formal, Informal, Procedural and Policy. A complaint is an act of expressed dissatisfaction, which relates to Department operations, personnel conduct or unlawful acts. Typically the Internal Affairs Unit (IA) unit conducts administrative investigations that are generally adjudicated through the department. However, in some cases the IA unit may be required to conduct a parallel investigation with a criminal investigation.

IA investigates most allegations involving officer misconduct and investigators are fact finders only. They do not sustain a complaint nor do they recommend discipline. In cases where the IA Investigator concludes that the investigation supports sustainable allegations, the investigation is sent to the subject officer's chain of command. The commanding officer reviews the investigation and/or conducts further investigation to determine if the complaint should be sustained. If the commanding officer sustains the complaint, then the case is sent to the Disciplinary Review Panel to determine the type of discipline to impose.

DISCIPLINARY REVIEW PANEL

An area of concern for the IPA is the process that is used by the Disciplinary Review Panel to determine the final outcome of the investigation of a citizen complaint. The purpose of the Disciplinary Review Panel is to determine the finding and the type of discipline to recommend to the Chief of Police. The IPA has encountered difficulty in auditing and reconciling the Internal Affairs written investigation, the written investigation by the subject officer's supervisor, and the final recommendation by the Disciplinary Review Panel.

The IPA found that in the audit of three separate citizen complaint investigations where the subject officer's first line supervisor indicated that the evidence supported a sustain finding, the Disciplinary Review Panel did not recommend a sustain finding and there was no written record explaining their decision. The Disciplinary Review Panel leaves no paper trail to audit. This lack of information has been problematic because without detailed information from the Disciplinary Review Panel explaining their decision, the final outcome is left to speculation, criticism, and a lack of confidence in the process.

A clear, logical, and fair process should be in place to determine or explain how the Disciplinary Review Panel reached a finding. The IA investigators and subject officer's supervisor are in the best position to make a determination on the merits of the investigation because they conducted the investigation. Deciding the finding and the type of discipline to impose, if any, are two very separate and distinct functions. A citizen complaint supported by the evidence should be sustained even if no

discipline is imposed.

RECOMMENDATION

The Disciplinary Review Panel should document, at the conclusion of the hearing, how they reached their findings to enable the IPA to conduct an audit.

CASE CLASSIFICATION

As noted in previous annual reports, there are six classifications of complaints: Formal, Informal, Policy, Procedural, No Boland, and Inquiry. The reasons for classifying the complaints into different types are: (1) to streamline the investigation process so that cases that do not require a full investigation are resolved sooner while the cases requiring more time are given appropriate time to investigate; (2) to track Formal, Informal, and Procedural complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling; (3) to comply with motions for discovery in criminal and civil proceedings; and (4) to identify patterns or trends so that recommendations can be made to change an existing policy or procedure.

Statistical information is provided in this Chapter which shows that there was a total of 694 cases filed in 2000. A breakdown by type of complaint and the office in which the complaint was filed is provided.

INTERVENTION COUNSELING

The "Intervention Counseling" process is an early warning system for identifying and/or correcting errant behavior. The process is designed to identify officers that receive three or more Formal complaints or a combination of five or more complaints of any type within a 12-month period. Once an officer has been identified who meets the above criteria, they are scheduled and required to attend an informal counseling session. Counseling sessions usually include the Deputy Chief of the subject officer's bureau, the Internal Affairs Commander, and the immediate supervisor.

This informal counseling session involves a review of the complaint(s) against the subject officer and is done without regard to a finding of sustained or not sustained. This meeting is intended to be a proactive attempt to address real or perceived unacceptable behavior before it becomes a real problem. Because this is an informal process, no formal record is made of the substance of the counseling session and only the fact that the officer was counseled is tracked. This past year, thirteen (13) officers received Intervention Counseling, only one received a subsequent complaint.

UNNECESSARY FORCE COMPLAINTS

This past year, there were 220 Formal complaints received from January 1 through December 31, 2000. This is a decrease in nine Formal Complaints over last year's figures. Of the 220 Formal complaints, 84 were classified as an Unnecessary Force (UF) complaint. This is a decrease of 30 complaints or 26%. Because each complaint may contain more than one allegation, this year there were 129 Unnecessary Force allegations. This is a reduction of 54 allegations or a 30% decrease in the number of allegations made over last year figures.

Unnecessary Force complaints are divided into two categories: Class I and II. A Class I case involves a complaint in which the complainant requires immediate emergency medical attention for their injuries. Class II cases includes those complaints in which the complainant did not require immediate medical care. Of the 84 Use of Force cases filed, 16 were Class I and the remaining 68 were Class II cases.

There were a total of 144 different types of force alleged in 2000. In each complaint, the complainant may have alleged more than one type of force that was used by the subject officer(s). The four types of force most commonly alleged were baton, feet, car (officer), and hands. In 2000, the officer's use of a baton allegedly resulted in injury to the complainant in 10 cases or 7% of the time. This is a slight decrease from prior years. The alleged use of force resulting from the officer using his/her feet, such as leg sweeps or kicking the complainant occurred in 15 cases or 10% of the time. This also is a decrease from the previous year.

The area afflicted is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown. Each complaint may allege more than one area of body afflicted by the alleged use of force. In 2000 the distribution of alleged injury was 22% to the head, 18% to the torso, 38% to the limbs, 12% of multiple body parts injured, and 10% were unknown. In Appendix F, the injuries to the head decreased in occurrence but increased in percentage relevant to the number of complaints filed.

The "Degree of Injury" results from the alleged use of force ranged from minor to major and included categories for "None Visible" and "Unknown" degrees of injury. In 2000, there were 84 UF cases with the following distribution of alleged injuries: 15% major injuries, 6% moderate, 55% minor, 9% had no visible injury, and 16% were unknown degree of injuries. In Appendix G, throughout the years, minor injuries remain the highest degree of injuries alleged by the complainant. However, the moderate degree of injuries dropped from 18% in 1996 to 6% in 2000. The 6% figure is slightly higher than the 1999 figure of 4%.

Discipline is only imposed on Formal complaints, which are the most serious misconduct complaints. This type of complaint is initiated by a citizen (Citizen-Initiated - CI complaints) or by the Chief of Police (Department-Initiated - DI complaints.) In the year 2000, 18 out of 187 Formal CI closed cases were sustained, which resulted in a 10% sustained rate. In contrast, 31 out of 41 Formal DI closed cases were sustained, a 76% sustained rate. The combined sustained rate for Formal cases overall is 23%.

Of the 228 Formal cases closed in this reporting period, January 1 through December 31, 2000, discipline was imposed in 74 cases. The three types of discipline imposed for Formal cases with the highest frequency were: Training and/or Informal Counseling (22), Documented Oral Counseling (35), and Letter of Reprimand (5).

DID THE AUDITOR ATTEND OFFICER INTERVIEWS CONDUCTED BY IA AFTER BEING NOTIFIED?

Due to the ongoing challenge during 2000 by the San José Police Officer Association, the IPA was unable to delegate attendance at officer interviews to a qualified staff member, which in turn, reduced the IPA's ability to attend subject and witness officer interviews. In 2000, of the 201 Formal cases, the IPA requested to be notified of police officer interviews in 85 or 72% of the cases. Of those, the IPA was notified of 67 interviews, with the Police Auditor attending 29 interviews where notification was received. IA failed to provide notice to the Auditor or the notice was not provided in time in 18 cases. Notification is still an area that can be improved in the coming year. It appears that some of the notification problems were attributable to the turnover in IA investigators. The IPA has discussed these issues with the IA commander and is confident that this situation will improve in 2001.

DID THE IPA AGREE WITH THE FINDING OF THE COMPLAINT?

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in 4 or 2% of the 201 Formal cases even after further action was requested from IA. In 1999, the IPA disagreed with 6 or 5% of the Formal cases.

CHAPTER EIGHT

CASES BY COUNCIL DISTRICT

In this chapter, the Council District charts show cases and allegations in the respective City Council District. Illustration A lists each Council District and the types of cases that were received in each District. A Council District indicates the location

where the incident occurred and not necessarily where the complainant resides.

Typically, the highest numbers of cases (198 or 29 % of all complaints) were generated in District 3, largely because of the diverse activities generated in the downtown area. District 5, a neighboring district, has the second highest number of cases (77); District 6 has the third highest number of cases (67); and District 7 has the fourth highest number of cases (61).

EVOLUTION OF CASE CLASSIFICATIONS

A comparative five year analysis of classified cases by Council District is provided for the years 1996 through 2000. There is a fluctuation in the number of complaints during these five years due in part to how the classification of cases has changed in an effort to streamline the investigation of complaints. During this time period the IPA and IA offices have worked through many issues to insure that complaints were being classified correctly and that the information was made adequately available to each office. After several years of working out different classifications issues, a comprehensive database was developed to track complaints and share information between the two offices. The new database became operational in 1998.

CHAPTER NINE

STATISTICAL BACKGROUND OF SUBJECT OFFICER

An additional statistical area tracked by the Office of the Independent Police Auditor (IPA) is the background of the subject officers who are listed in Formal (Citizen-initiated and Department-Initiated), Informal, and Procedural complaints. Specific areas include the subject officer's work unit, gender, and years of experience with the SJPd at the time the incident occurred. It should be noted that cases that are classified as Inquiries do not track the subject officer.

Of the 1,371 officers working for the SJPd, 32% of the officers received a complaint. Female officers, who make up 9% of the force, were subject to 9% of the complaints filed. 2000 data also indicates that the percentage of complaints for different ethnic groups in the SJPd closely matched their percentage make up in the department. Years of experience data indicate that officers with two to four years of experience received the highest number of complaints. These officers account for 16% of the SJPd workforce but were involved in 26% of the complaints. However, this is a reduction from the previous year's 41%

CHAPTER TEN

BACKGROUND OF COMPLAINANT BY COUNCIL DISTRICT

The Office of the Independent Police Auditor (IPA) utilizes a Voluntary Questionnaire to request information about the statistical background of the complainants. The purpose of the Voluntary Questionnaire is to gather personal data from the complainant. This information is used to monitor community trends by ethnicity and helps to design IPA services around community needs and expectations. The Voluntary Questionnaire has been in place since 1995 and has been used to track and compare complainant data year to year.

GENDER OF COMPLAINANT

During the 2000 calendar year a total of 423 complainants responded to the Voluntary Questionnaire. Of those responding, there were more male complainants (62%) than female complainants (38%). This is a 5% increase in the number of female complainants over the year prior.

ETHNICITY OF COMPLAINANT

The ethnicity of the complainant is shown in Appendix L. The data collected is by Council District for the period of January 1 through December 31, 2000. As noted in this appendix, Council Districts 3, 5 & 7 generate the majority of the complaints filed. Hispanics/Latino filed the most complaints, 160 complaints (38%), a 6% increase over the prior year. European Americans filed 106 complaints (25%) an 8% increase and African Americans filed 55 complaints (13%) a 3% increase over prior year complaints filed.

AGE OF THE COMPLAINANT

As in previous years, complainants between the age of 31–59 and 18–30, filed the majority of complaints. This past year, there was an interesting rise in the number of complainants over 60 years of age that filed complaints. In 1999, this age group filed only 2% or 9 complaints, while this past year they filed 9% or 36 complaints. Staff believes this rise may be attributed to IPA community outreach efforts that have typically been attended by more senior community members.

EDUCATION LEVEL OF COMPLAINANT

Almost half (41%) of the complainants have received an education beyond the twelfth grade. It's interesting to note that of the total number of complainants filing a complaint, 41% have attended college, with 9% of the total number having attended

college for more than four years. The above figures tend to dispel the assumption that most complainants come from the uneducated sector of the community.

CHAPTER ELEVEN

CONCLUSION

The Office of the Independent Police Auditor (IPA) realized several significant accomplishments over the past year. The relocation of the office, from its previous location at 4 North Second, Suite 650 was finalized on August 5, 2000. The new location keeps the IPA in a central downtown location that is close to several forms of public transportation, and in a location where historically the greatest percentage of citizens that tend to utilize the services of the IPA reside, work or play.

As part of the 1999-Year End Report, the IPA recommended adding subpoena power for the San José Police Department Internal Affairs Unit, to assist in compelling civilian witnesses to divulge information critical to an investigation, release and/or provide physical evidence such as medical records that may be integral to an investigation. The City Council adopted this recommendation and authorized subpoena power to the Internal Affairs Unit.

The IPA also proposed a “Voluntary Mediation Program” and the development of specialized training courses to enhance the communication skills of the officers assigned to meet and greet the public. The recommendations for developing a “Mediation Program” and “Specialized Communications Training Courses” was adopted by the City Council. A “Voluntary Mediation Program” will be implemented in the 2001 calendar year.

A major goal for the 2001 calendar year is for the IPA to take a proactive approach to civilian oversight of police practices. This proactive approach will include exploring innovative ways to reduce the frequency of complaints alleged to have violated policies stemming from prior IPA recommendations, identify police conduct that is resulting in complaints and/or law suits, and create a vertical review process that brings together city departments that directly or indirectly address police misconduct.